

OFFICE OF THE ATTORNEY GENERAL
STATE OF NEVADA

In the Matter of:

PUBLIC UTILITIES COMMISSION
OF NEVADA.

AG FILE NO.: 13897-199

**FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

BACKGROUND

Angel De Fazio filed three separate complaints (collectively "Complaint") with the Office of the Attorney General (OAG) alleging violations of the Nevada Open Meeting Law (OML) by the Public Utilities Commission of Nevada (Commission or PUC). The Complaint alleges that the Commission did not comply with the OML in the following respects:

ALLEGATION NO. 1: The Commission unlawfully redacted the address and phone number from the resume of one of the finalists for PUC Director in the supporting material for its July 22, 2015, meeting;

ALLEGATION NO. 2: The Commission did not hold public meetings to authorize or approve the following actions taken by the PUC Executive Director: a) submitting a response to the U.S. Department of Transportation's annual Pipeline Safety Program Review, b) revising its Administrative Policy Manual, and c) designating a records official;

ALLEGATION NO. 3: The Commission did not hold public meetings to receive reports from the PUC Executive Director regarding staff involvement on external committees and on the assessment and collection of administrative fines;

ALLEGATION NO. 4: The Commission did not hold public meetings to authorize or approve bill draft requests (BDRs) for the 2017 Nevada Legislative Session;

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ALLEGATION NO. 6: The Commission did not hold public meetings to authorize or approve the posting of an unclassified job announcement for the position of PUC General Counsel.¹

The OAG has statutory enforcement powers under the OML and the authority to investigate and prosecute violations of the OML. NRS 241.037; NRS 241.039; NRS 241.040. The investigation of the Complaint included OAG review of the public notice, agendas, supporting material and minutes for meetings held on June 10, 2015, July 22, 2015, September 30, 2015, and May 26, 2016, together with written responses to the Complaint from Garrett Weir and Hayley Williamson, PUC Assistant General Counsel.

In the course of investigating this matter, the OAG determined that the activities of the selection committee appointed by the Commission on June 10, 2015, to interview and select finalists for a new PUC Executive Director, implicate the OML. The scope of the investigation was expanded to include the selection committee and the applicability of the OML to the selection committee is addressed in this opinion.²

The Commission was created pursuant to NRS Chapter 703, is a “public body” as defined by NRS 241.015(4), and is subject to the OML. The PUC Executive Director position was created in 2009 to have full administrative management authority over the Commission, thereby separating the Commission’s policy-related functions from its administrative functions. Assembly Bill 510, 2009 Leg., 75th Sess. Prior to the creation of the position of PUC Executive Director, actions that were administrative in nature

¹ In addition, the complaint alleges that the PUC Executive Director does not meet the statutory qualifications required for the position as set forth in NRS 703.130(2). However, this allegation fails to state a claim under the OML.

² The selection committee was the subject of a prior OML complaint and opinion, OMLO 13897-158. Because OMLO 13897-158 did not directly address the underlying issue of whether the selection committee was a public body subject to the OML, OMLO 13897-158 is withdrawn and superseded by this opinion.

1 pertaining to internal PUC operations were brought before the Commission for action at
2 public meetings held in conformance with the OML.

3 The PUC Executive Director is appointed by the Commission pursuant to NRS
4 703.130(2). The PUC General Counsel is appointed by the Commission pursuant to NRS
5 703.164(1). These appointments require action by the Commission at public meetings
6 held in conformance with the OML. NRS 703.130(3) sets forth the powers and duties of
7 the PUC Executive Director. Matters that are beyond the statutory authority of the PUC
8 Executive Director require action by the Commission at public meetings held in
9 conformance with the OML.

10 LEGAL STANDARD

11 The legislative intent of the OML is that the actions of public bodies “be taken
12 openly, and that their deliberations be conducted openly.” NRS 241.010(1); *see also*
13 *McKay v. Board of Supervisors*, 102 Nev. 644, 651, 730 P.2d 438, 443 (1986) (“the spirit
14 and policy behind NRS chapter 241 favors open meetings”). Public bodies working on
15 behalf of Nevada citizens must conform to statutory requirements in open meetings under
16 an agenda that provides full notice and disclosure of discussion topics and any possible
17 action. *Sandoval v. Board of Regents*, 119 Nev. 148, 67 P.3d 902 (2003).

18 The term “public body” includes any “administrative, advisory, executive or
19 legislative body of the State . . . which advises or makes recommendations to any entity
20 which expends or disburses or is supported in whole or in part by tax revenue.” NRS
21 241.015(4)(a). The statutory definition was amended in 2011 to clarify that the definition
22 includes bodies created by “resolution or other formal designation [a public] body created
23 by a statute of this State.” Assembly Bill 59, 2011 Leg., 76th Sess. Consistent with this
24 statutory definition, the OAG has previously opined that to the extent a multimember
25 group is appointed by a public body and given the task of making decisions for or
26 recommendations to that public body, that group is also a “public body” subject to the
27 OML. *See* § 2.04 NEVADA OPEN MEETING LAW MANUAL (12th ed. 2016) (and
28 opinions cited therein).

1 NRS 241.030(4)(d) prohibits a closed meeting for the discussion or appointment of a
2 person to public office by a public body. All portions of the selection and appointment
3 process, whether conducted by the public body itself or delegated to another body, must
4 occur in a public meeting. *City Council of City of Reno v. Reno Newspapers, Inc.*, 105 Nev.
5 886, 891, 784 P.2d 974, 977 (1989). Any action taken in violation of the OML is void.
6 NRS 241.036.

7 **THE ALLEGATIONS IN THE COMPLAINT**

8 1. The limited redaction of the supporting material for the July 22, 2015,
9 Commission meeting did not compromise the purpose of the supporting material: to
10 provide the public with the professional background and qualifications of the two finalists
11 for the position of PUC Executive Director. Therefore, Allegation #1 is without merit.

12 2. The actions taken by the PUC Executive Director that form the basis for
13 Allegation #2 are within the statutory authority of the PUC Executive Director under
14 NRS 703.130(3) and do not require action by the Commission. Furthermore, there is no
15 evidence that the Commission met in violation of the OML to authorize or approve the
16 actions in question. Therefore, Allegation #2 is without merit.

17 3. There is no evidence that the Commission met in violation of the OML to
18 receive reports from the PUC Executive Director. Therefore, Allegation #3 is without
19 merit.

20 4. The submission of BDRs to the Nevada Legislature is not within the
21 statutory authority of the PUC Executive Director and requires action by the Commission
22 at a public meeting held in conformance with the OML. However, the Commission's legal
23 counsel represents that the Commission is not requesting any BDRs for the 2017 Nevada
24 Legislative Session. Furthermore, there is no evidence that the Commission met in
25 violation of the OML to consider BDRs. Therefore, Allegation #4 is without merit.

26 5. The submission of contracts to the State Board of Examiners for approval is
27 within the statutory authority of the PUC Executive Director under NRS 703.130(3)(b)(5)

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1 and does not require action by the Commission. Furthermore, there is no evidence that
2 the Commission met in violation of the OML to authorize or approve the contracts in
3 question. Therefore, Allegation #5 is without merit.

4 6. The unclassified job announcement for the position of PUC General Counsel
5 was posted in conformance with the State personnel laws. Furthermore, there is no
6 evidence that the Commission met in violation of the OML to authorize or approve the
7 posting of an unclassified job announcement for the position of PUC General Counsel.
8 Therefore, Allegation #6 is without merit.

9 **APPLICABILITY OF THE OML TO THE SELECTION COMMITTEE**

10 **Findings of Fact**

11 1. The public notice and agenda for the June 10, 2015, Commission meeting
12 concerned the process for replacing the retiring PUC Executive Director.

13 2. The minutes of the June 10, 2015, Commission meeting state that under
14 agenda item no. 2(D) the Commission took the following action: "Chairman Burtenshaw
15 moved that the Commission post the opening for Executive Director as an
16 internal/external open competitive recruitment, recruit for the Carson City office,
17 designate five members to the selection committee consisting of Ms. Anne-Marie Cuneo,
18 Ms. Tammy Cordova, Ms. Crystal Jackson, Mr. Don Lomoljo, and Ms. Carolyn Tanner
19 with Ms. Breanne Potter serving as the Personnel Officer, and at a subsequent agenda
20 meeting recommend the top two finalists to the Commission for appointment
21 consideration by the full Commission. Commissioner Wagner seconded the motion and
22 Commissioner Noble concurred."

23 3. The public notice and agenda for the July 22, 2015, Commission meeting
24 concerned the appointment of a new PUC Executive Director. Agenda item no. 3(B) for
25 the meeting indicated: "Appoint Executive Director from finalists Kathleen Taylor or
26 Stephanie Mullen recommended by the Commission's internal selection committee. FOR
27 POSSIBLE DISCUSSION/ACTION: APPOINT EXECUTIVE DIRECTOR.

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1. Because the selection committee was appointed by the Commission at its June 10, 2015, meeting to select two finalists for the PUC Executive Director position pursuant to NRS 703.130(2), the selection committee was a “public body” as defined in NRS 241.015(4)(a)(5), subject to the OML.

3. If the Commission appoints a committee to interview and select finalists for the position of General Counsel for presentation to the Commission for a final decision, that committee will be a “public body” as defined in NRS 241.015(4)(a)(5), subject to the OML.

Due to the expiration of the limitations periods for legal action set forth in NRS 241.037(3) and NRS 241.040(4), this opinion is advisory. Nevertheless, because the OAG finds that the Commission has taken action in violation of the OML, the Commission must place on its next meeting agenda these Findings of Fact and Conclusions of Law and include them in the supporting material for the meeting. The agenda item must acknowledge these Findings of Fact and Conclusions of Law to be the result of the OAG investigation in the matter of Attorney General File No. 13897-199, and that it has been placed there as a requirement of NRS 241.0395.

1 Furthermore, the OAG strongly recommends that the Commission members and
2 staff receive training in the OML; the OAG is available to provide OML training upon
3 request.

4 DATED this _____ day of August, 2016.

5 ADAM PAUL LAXALT
6 Attorney General

7 By: _____
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CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that on this 10th day of August, 2016, I caused to be deposited for mailing, a true and correct copy of the foregoing, FINDINGS OF FACT AND CONCLUSIONS OF LAW, to the following:

Angel De Fazio
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